

December 23, 2014

Ms. Deborah Moorhouse  
4953 Valley Willow Way  
Elk Grove, CA 95758

Re: Your Request for Advice  
**Our File No. A-14-213**

Dear Ms. Moorhouse:

This letter responds to your request for advice regarding the post-employment provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note that we are only providing advice under the post-employment and conflict-of-interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or the Public Contracts Code.

### **QUESTION**

Do the post-employment provisions of the Act restrict or affect your transferring from Visionary Integration Professionals (“VIP”), a private employer, to a position at Hewlett Packard (“HP”) and continuing your work on the Case Management, Information and Payrolling System II (“CMIPs II”) project in that capacity?

### **CONCLUSION**

Because you did not qualify as a designated state employee of the Office of System Integration (“OSI”) while working at VIP, the Act’s post-employment provisions, described below, do not apply to you. Provisions of the Act will not restrict or affect your transferring from VIP to a position at HP and continuing to work on the CMIPs II project.

### **FACTS**

You were employed by the private consulting firm VIP which does information systems consulting work with federal, state and local government agencies and with private companies.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

As an employee of VIP, you were working under a one-year contract between VIP and OSI regarding the CMIPS II project of the California Department of Social Services (CDSS).

The CMIPS II project tracks case information and processes payments for the CDSS In-Home Supportive Services Program, enabling qualified aged, blind, and disabled individuals in California to remain in their own homes and avoid institutionalization. OSI provides project management support for CDSS and performs oversight on information technology system implementation. The Scope of Work for VIP in connection with the project specifically provides:

“The purpose of the agreement is to provide consultants to assist the CMIPS II Project State team in the oversight activities and review of the CMIPS II Prime Vendor during the Maintenance and Operations (M&O) Phase of the CMIPS II Project. Specifically the consultants will assist the CMIPS II Project State team by providing expertise in the system engineering duties and responsibilities listed in Exhibit A – SOW.”

Under the agreement, VIP provided several individuals to perform a variety of tasks, there were two Project Management Advisors, a Systems Engineer, a Database Analyst, a Configurations Management Analyst, a Verification and Validation Analyst, two System Support Analysts, and a Technical Lead. You served as the Project Management Advisor #1 for VIP.

You stated that generally under the contract your role was to work with project managers at OSI and HP as a facilitator. More specifically the contract between VIP and OSI provided that you do the following:

1. Ensure that HP's project management plan, activities and reporting are consistent with project management standards and best practices as agreed upon by the parties.
2. Monitor, review, and support State project management activities to help ensure consistency with OSI project management best practices.
3. Review and ensure consistency of State and HP project management plans, work plans, schedules, milestones, deliverables, staffing plans, resource utilization and milestones.
4. Review and Make recommendations to the CMIPS II Project Director.
5. Monitor execution of all project plans and performance reporting against those plans, including project metrics and status.
6. Assist in developing State project work products.

7. Provide recommendation for project risk management, risk mitigation, and contingency planning.
8. Make recommendations for project issue and change management activities and provide related process flow metrics.
9. Provide recommendations for issue identification and resolution activities among stakeholders, HP, County and CDSS customers, and project staff.
10. Participate in risk management activities associated with State and county business requirements, including risk identification, mitigation, and contingency planning.
11. Assist in the review and evaluation of HP deliverables and provide findings and recommendations to CMIPS II project management.
12. Provides knowledge transfer and training to state and or new contractor staff as directed by CMIPS II project management

According to the agreement you accomplished these responsibilities by developing a Task Accomplishment Plan and by providing oral and written updates on a regular basis to OSI, a final report, and Knowledge Transfer of Plan (including training materials) to OSI at the end of the project. You also acted as an advisor to OSI on project risk management issues and evaluated and made recommendations regarding the progress of the project.

You stated that you were not a designated employee of OSI pursuant to the VIP/OSI contract and you were not required to submit the Form 700 statement of economic interests because you made no final decisions. You noted that you work with project management staff at OSI and HP who make final decisions.<sup>2</sup> You stated that it was your understanding that:

“OSI has a Project Management Office, but it is staffed with analysts and project managers who have not had experience with large and complex IT development projects. From 2006 onwards, through multiple contracts, OSI has contracted with VIP to provide project managers and technical staff to help mentor and support their team. Project Managers review documentation and requirements alongside the OSI counterparts, attend meetings etc., providing expertise and balanced recommendations to the OSI team, as they interface with HP. Consultants do not approve contractual deliverables or make decisions. They are not part of the OSI leadership team and are not included in leadership and executive discussions. Their role is solely to provide guidance on best practice project management processes and increase the department’s process maturity and ability to support future projects. As part of this, we conduct a lot of business

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<sup>2</sup> Additional facts provided on December 22, 2014.

process assessments, gap analysis and transition planning. Determining the ‘as-is’ process, where the gap is between ‘as-is’ and best practice, and how to transition to best practice. One Deliverable we are required to provide is a Knowledge Transfer Plan with the intent that as we transition off the project we have enabled the State staff to fulfill the role without support.”

Essentially, you are seeking to transfer from VIP to a position at HP (from one private firm to another private firm) to continue your work on the CMIPS II project in that capacity.

### ANALYSIS

*Public officials* who have left state service are subject to two types of post-governmental employment provisions under the Act, the *permanent ban* on switching sides in a proceeding and the *one-year ban* on appearing before one’s former agency. In addition, an official who is in the process of leaving government service may not make or use his or her official position to influence a governmental decision directly relating to a business with which the official is negotiating prospective employment. (Section 87407.) Together these are known as the “revolving door” prohibitions.

*The Permanent Ban:* The “permanent ban” prohibits a former state employee from “switching sides” and participating, for compensation, in any specific proceeding involving the State of California or assisting others in the proceeding if the proceeding is one in which the former state employee participated while employed by the state. (See Sections 87401-87402; Regulation 18741.1.)

*The One-year Ban:* The “one-year ban” prohibits a former state employee from making, for compensation, any formal or informal appearance, or making an oral or written communication, before his or her former agency for the purpose of influencing any legislative or administrative action or any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property for one year after leaving state service. (See Section 87406; Regulation 18746.1.)

However, both of these bans apply to *public officials* leaving state employment. The Act defines “public official” in Section 82048 to include “every member, officer, employee or consultant of a state or local government agency.” A contractor who qualifies as a “consultant” as defined by the Act is designated in an agency’s conflict of interest code. The Act recognizes two ways that a contractor may be considered a “consultant” subject to the rules of the Act.

*1. Making a Governmental Decision.* First, the term “consultant” is defined in Regulation 18701(a)(2)(A) as an individual who, pursuant to a contract with a government agency makes a government decision to:

“(i) Approve a rate, rule, or regulation;

“(ii) Adopt or enforce a law;

“(iii) Issue, deny, suspend, or revoke any permit license, application, certificate, approval, order, or similar authorization or entitlement;

“(iv) Authorize the agency to enter into, modify or renew a contract provided it is the type of contract that requires agency approval;

“(v) Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract; “(vi) Grant agency approval to a plan, design, report, study, or similar item;

“(vii) Adopt or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

You stated that in your employment with VIP you did not make any final decisions for OSI.

2. *Serves in a Staff Capacity.* Second, the Act defines the term “consultant” in Regulation 18701(a)(2)(B) as an individual who, pursuant to a contract with a government agency:

“Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency’s Conflict of Interest Code under Government Code section 87302.”

The phrase “serves in a staff capacity” in Regulation 18701(a)(2)(B) has been construed by the Commission to include only those individuals who are performing *substantially all the same tasks that normally would be performed by one or more staff members of a governmental agency*.

Arguably while some of the project management tasks described above could be performed by internal staff, it is clear from the scope of work that that VIP was intended to provide some outside oversight over the efficiency of the project process as managed by state and HP staff.

Moreover, also implicit in the notion of serving in a staff capacity is an ongoing relationship between the contractor and the public agency. We have advised that a contractor serves in a staff capacity when the contract calls for work to be performed “over more than one year” on “high level” projects (*Ferber Advice Letter*, No. A-98-118). We have further advised that a contractor does not act in a staff capacity where the work is to be performed on one project

or a limited number of projects over a limited period of time (*Sanchez* Advice Letter, No. A-97-438). VIP's contract is a one-year term and your duties were limited with clearly defined deliverables and objectives and no indication that you would somehow supplant or duplicate the duties of staff of the agency.

Based on the totality of circumstances, we conclude that you never qualified as a "consultant" as defined in the Act and are not subject to either the one-year ban or permanent ban of the Act. Accordingly, provisions of the Act would not restrict or affect you transferring from VIP to a position at HP and continuing to work on the CMIPS II project at HP.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Hyla P. Wagner  
Senior Counsel, Legal Division

HPW:jgl